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NO. 82-210

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE CITY OF FORT WORTH, TEXAS, PETITIONER

VS.

WALTER E. GARRIS

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondent, Walter E. Garris, respectfully prays that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be in all things denied, and for grounds would show the following:

STATEMENT OF THE CASE

The Statement of the Case contained in the petition is correct.

REASON FOR DENYING WRIT OF CERTIORARI

The Judgment and Opinion of the Court of Appeals for the Fifth Circuit is consistent with and in accordance to prior holdings of this Court.

The Judgment and Opinion of the Court of Appeals for the Fifth Circuit are not contrary to, or inconsistent with, the holdings of this Court in Baker v. McCollan, 443 U.S. 137 (1979) and Franks v. Delaware, 438 U.S. 154 (1978).

> "The Fourteenth Amendment does not protect against all deprivations of liberty. It protects only against deprivations of liberty accomplished 'without due process of law'." (Emphasis Ours), Baker, supra, at 145.

"Due Process" requirements of an affidavit to obtain a warrant were established by this Court long ago in

Aguilar v. Texas, 378 U.S. 108 (1964), and Giordenello v. United States of America, 357 U.S. 480 (1958). The Court of Appeals for the Fifth Circuit properly found that the affidavit upon which the warrant for Respondent's arrest was predicated, was facially invalid in that it did not comply with those due process requirements mandated by this Court in Aguilar and Giordenello.

As the Court of Appeals found the affidavit supporting the arrest warrant to be facially invalid, this Court's holding in Franks v. Delaware, supra, has no application.

Likewise, Rodriquez v. Ritchey, 556 F.2d 1185 (cited by Petitioner) has no application:

> "...(W)hen one alleges an arrest without unreasonable force under a valid warrant issued pursuant to a properly constituted grand

> jury indictment, no cause of action is stated under the Fourth Amendment." (Emphasis Ours), Rodriquez, supra, at 1194.

As this Court reflected in Giordenello,

> "A warrant of arrest can be based upon an indictment because the grand jury's determination that probable cause existed for the indictment also establishes that element for the purpose of issuing a warrant for the apprehension of the person so charged. Here, in the absence of an indictment, the issue of probable cause had to be determined by the Commissioner, and an adequate basis for such a finding had to appear on the face of the complaint." (Emphasis Ours), Giordenello, supra, at 487.

CONCLUSION

Inasmuch as the Judgment and Opinion of the Court of Appeals for the Fifth Circuit is consistent with and in accordance to prior holdings of this Court and the due process requirements of the Fourteenth Amendment of the United States Constitution were not complied

with, the Petition for Certiorari should be denied.

Respectfully submitted,

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By: Don Gladden
DON GLADDEN

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been placed, postage prepaid, in the United States First Class Mail on this the _____ day of August, 1982, addressed to Wade Adkins, City Attorney, 1000 Throckmorton Street, Fort Worth, Texas 76102.

Don Gladden
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